



DE-NOTIFIED TRIBES IN INDIA: A LEGAL PERSPECTIVE

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Abstract-- The social category generally known as the De-notified and nomadic tribes of India covers a population approximately of 60 million. Some of them are included in the list of Schedule Caste, some other in the Schedule Tribes, and quite a few in Other Backward Classes. But there are many of these tribes, which find place in none of the above. What is common to all these de-notified tribes is the fate being branded as 'born' criminals in colonial India; some Nomadic Communities came to be branded as "Criminal Tribes" in 1871. Through the Criminal Tribes Act of 1871, the Government assumed that all the people born in particular tribes were criminals and incorrigible. According to this Act, the discrimination and socio-economic marginalization of these nomadic 'criminal' tribes were started. After Independence, the criminal tribes were de-notified by repealing the Criminal Tribes Act, 1871. This law has brought about little change in their living conditions. Yet these communities continue to carry the stigma of criminality with them. The attitude of society & bureaucrats remain prejudiced & the inhuman treatment continues, and no serious policy is available till today. After independence, both Central and State Government has adopted many welfare schemes for the upliftment of de-notified tribes. The upliftment of de-notified tribes aims at their complete rehabilitation, eradication of all stigma and discrimination. Since the late 1970s, de-notified tribes have launched several protection measures. This type of change in livelihood and survival raises the issue of secondary life, because they are expected to become a part of the mainstream, but they are also to be segregated from the main society. This paper is based on doctrinal work and the data collected from books, journals, news paper articles and Government notifications. This paper provides a strong platform to discuss about National, Human right and International provisions of protection of de-notified tribal peoples in India.

Keywords: *De-Notified and Nomadic Tribes, Discrimination, marginalization Welfare Schemes, Human Right.*

INTRODUCTION

The social category generally known as the De-notified and nomadic tribes of India covers a population approximately of 60 million. Some of them are included in the list of Schedule Caste, some other in the Schedule Tribes, and quite a few in Other Backward Classes. But there are many of these tribes, which find place in none of the above. What is common to all these de-notified tribes is the fate being branded as 'born' criminals

In colonial India, some Nomadic Communities came to be branded as "Criminal Tribes" in 1871. Through the Criminal Tribes Act of 1871, the Government assumed that all the people born in particular tribes were criminals and incorrigible. According to this Act, the discrimination and socio-economic marginalization of these nomadic 'criminal' tribes were started. After Independence, the criminal tribes were de-notified by repealing the Criminal Tribes Act, 1871. This law has brought about little change in their living conditions or enforced wondering. These communities continue to carry the stigma of criminality with them. The attitude of society & bureaucrats remain prejudiced & the inhuman treatment continues, and no serious policy.

The Central and State Government has adopted many welfare schemes for the upliftment of de-notified tribes. Its aims are at their complete rehabilitation, eradication of all stigma and discrimination. For the purpose of protection of the de-notified tribes the Government launched several protection measures. This type of change in livelihood and survival raises the issue of secondary life, because they are expected to become a part of the mainstream, but they are also to be segregated from the main society.

In tribal population of the country, as per 2011 census, is 10.43 crore, constituting 8.6% of the total population. 89.97% of them live in rural areas and 10.03% in urban areas. In India there are 60 million of population comprises of de-notified and nomadic tribal groups. In India there are 313 Nomadic Tribes and 198 De-notified Tribes. Due to the wandering traditions over hundreds of years without any ostensible means of livelihood



under the influence of the caste system, they are forced to live under sub human conditions. The large section of these tribes is known as “Vimukta jaatis” or the Ex-Criminal Tribes because they were branded as criminals by birth under the “Criminal Tribes Act 1871”, enacted by the British Government. In spite of the repeal of the act in 1952, they are still treated as Criminals by birth and subjected to harassment and persecution at the hands of the police and the state machinery. However, they have been deprived of the status of Scheduled Tribes provided by the constitution due to certain historical circumstances and the acts of omission and commission on part of the Government and the society.

TRIBES

Tribes are the aboriginal group of people from a particular geographical area. They are also called as indigenous people. A tribe is a social group of humans connected by a shared system of values and organized for mutual care, defence, and survival beyond that which could be attained by a lone individual or family. A 'tribe' is defined in anthropology when viewed historically or developmentally, a tribe is a mutual care system which, unlike a kingdom or state or other schema, is oriented around kinship and shared beliefs. Tribes can well exist simultaneously with other plan such as states or other systems. They might consist of a social group existing before the development of, or outside of states.

Tribes are the most enduring and successful social survival system that has ever existed on earth. Tribes can exist within or without a state or kingdom and may or may not depend on the state or kingdom to endure. The Anthropological Survey of India under the “People of India Project” identifies 461 tribal communities in India. Prior to Independence these tribes have always been in a bad light and been treated inhumanly. Their identity was questioned.

De-notified tribes: The De-notified Tribes (DNT) and Nomadic Tribes (NT) of India were identified as “Criminal Tribes” (which included both castes as well as tribes) in pre-independence India. Though the Criminal Tribes Act, 1871 was annulled soon after independence, the police, as well as members of the public, frequently and most regrettably continue to treat persons belonging to these communities as “born criminals” and “habitual criminals”. They, therefore, remain amongst the most discriminated and disadvantaged groups in the country also excluded group in the country and also excluded group in the country.

The de-notified are those gropes of people who once were notified as criminal tribes under the criminal tribes Act, 1871 by the British and after India’s independence the same were de-notified by an Act repeal 1952.

The term DNTs is alien to International law. However scrutiny of history and characteristics of India’s DNTs would reveal that they are described as indigenous people under International law and there exist well defined legal framework on indigenous under International law.

History of De-notified Tribes: The de-notified tribes during the British regime, due to specific administrative as well as law and order reasons, were ‘notified’ as being ‘born criminal’ by the British Government under a series of laws starting with the Criminal Tribes Act of 1871. These laws were enacted as crime was considered a ‘hereditary profession’ and the enactment of the law and its entry into the working of police training as well as in the public arena slapped the brand of being ‘born criminals’ on the entire population of these communities. After Independence, this Act was repealed in 1952, and the communities were ‘de-notified’, hence the name The De-notified and Nomadic Tribes (DNTs), formally known and notified as the “Criminal Tribes of India” (1871) and subsequently “de-notified” (1952), constitute a total population of about 60 million of India’s population. While these communities are enlisted in various disadvantaged sub categories by the government, what they all share is the stigma of being ‘born criminals’.

The Criminal Tribes Act, 1871 had identified the following six categories as belonging to ‘criminal tribes’:

Petty traders who used to carry their merchandise on the back of animals and supply villages with varied items like salt, forest produce, etc.

Communities that entertained the public through performing arts. Among these were musicians, dancers, singers, storytellers, acrobats, gymnasts, puppeteers and tightrope walkers.



Communities that entertained the public with the help of performing animals such as bears, monkeys, snakes, owls, birds, etc.

Pastoral groups and the hunting, gathering, shifting cultivator communities within forests that traded not just in forest produce, but in animals as well. They were also herders, and traded in meat or milk products. Artisan communities that worked with bamboo, iron, clay etc. and made and repaired a variety of useful articles, implements and artefacts'. They traded or sold them to settled villagers.

Nomadic individuals who subsisted on charity, or were paid in kind for 'spiritual' services rendered to traditional Indian society. Such sadhus, fakirs, religious mendicants, fortune tellers, genealogists and traditional faith healers had a low but legitimate place in the social hierarchy of settled people. Some carried medicinal herbs and provided healing services as well.

Originally "notified" by the British colonial government as criminals in 1871, the DNTs should have enjoyed the freedom of independence that came to rest of India in 1947.

Instead, they have languished as the most handicapped community in the nation, with health, literacy and employment levels far below the average.

After Independence, nationalist leaders voiced their protest against the Criminal Tribes Act (CTA). Making entire communities responsible for offences committed by a few individuals was viewed as unjust. The Act was finally repealed in 1952 and the communities earlier "notified" as criminal under the Act were "de-notified" under the Habitual Offenders Act (HOAs). The de-notification and the passing of the Habitual Offenders Acts should have ended the misery of the communities penalized under the Criminal Tribes Act (CTA). But that has not happened. The HOA that replaced the CTA contains the same draconian laws as the CTA. The police as well as the people in general were taught to look upon the 'Criminal Tribes' as born criminals during the colonial times. This attitude continues to persist even today. The CTA continues to be part of the syllabus of police training determining attitudes of the legal machinery. The land possessed by the criminal tribes was already alienated during the colonial rule. After independence, various State Governments have done little to restore their land to them. Scheme for economic development do not reach them. The illiteracy rate among the de-notified communities is higher than among members of the Scheduled Castes and the Scheduled Tribes, malnutrition more frequent and provisions for education and health care almost negligible since most of the de-notified communities have remained nomadic in habit.

Being illiterate and ignorant of the law, the de-notified communities know very little about legal procedures and therefore, they often get into difficult situations. They are in short, one of the most vulnerable populations in India. All de-notified communities who are identified as "born criminals" by society and law and who are deprived of permanent occupations for a secure living face the following problems.

Even after 68 years of Indian Independence, there has been no census of the De-notified, Nomadic and Semi-Nomadic Tribes (DNTs) of India though it is estimated that their numbers run into millions. They are found in almost all the States. They are spread across the SC, ST and OBC categories. Some other communities are there, who are not covered under any of the above mentioned categories. They do not get any of the benefits provided to SC/ST or OBCs. Even those covered under the categories of SC/ST or OBCs are often not able to avail of the benefits because of either not having caste certificates, or because the relevant allocations are exhausted by the non-nomadic/non de-notified communities in the reserved categories. Moreover, a number of States have not prepared lists of either the De-notified or Nomadic communities, and the status of such people is unknown. As a result, DNTs are among the most underprivileged and destitute communities in India today. About 60 million of India's population comprises of people from de-notified and nomadic tribal groups. In India there are 313 Nomadic Tribes and 198 De-notified Tribes.

Human right perspective on de-notified tribes: Today human right are recognized as birth rights of every human being. Equally in the enjoyment of this right is powerful dimension of concept of human right. The democratic system gives great emphasis on meaningful enjoyment of human right which are inherent to every human being. Human right care universal, individual, interdependent and interrelated. The right to life freedom from torture, right to fair trial, etc are the inclusions in human rights. The India Constitution recognizes human



right as Fundamental for protection and promotion. The process of notification and subsequent de-notification has deprived the DNTs and nomadas of their basic human rights. Women of these communities are the worst hit seclusion. They are continuously put to inequitable treatment.

With no proof of residence or property ownership certificate some of the families of these tribes are not even in position to avail ration cards. they could not access to government welfare scheme because of absence of proof of identity. The identity crisis has prevented the DNTs and nomads from enjoying the dignified life.

Though the Criminal Tribes Act, 1871 is repealed by the Habitual Offenders Act 1952, the latter also has the effect of negating the universally proclaimed principles that all human beings are born free and equal. Listing of these tribes under the habitual offender Act also vitiates fundamental principles of Criminal Jurisprudence that a person is presumed to be innocent until the guilt is proved.

The right to life of at least some of these tribes is continuously violated. Majority of them donot staying at particular place as result they are not available for census, they don't get voter id, Adhar card, consequently they are denied of so many facilities and various programmes like Inira awash yojan, Ambedkar awas yojan, food security facilities and old age and widow pension. Though these tribes have family occupations for livelihood, begging is essential as supplementary job for most of them. Some nomadic communities carried out diversified economic activities but at present these livelihood are seriously threatened by modern process of development. Today grazing lands and forests are no longer open areas and this has made the life of pastorals very difficult. Technological revolution has made the artisan tribes jobless. Modern entertainment media has spoiled the entertainment tribes. With the introduction of elements of rationality, secularism and modernity, the religious performers are loosing their food.

The stigma attached to the DNTs has not vanished completely even after the process of de-notification. Despite the de-notification and the subsequent rule of law brought forth under Indian constitution, people belonging to tribes deprives them of the Fundamental and human right to free and trial free. It is sine quo non every trial to be fair that until the guilt is proved an accused is presumed to be innocent. The social and political branding and stigmatizing of these tribes as criminals infringes this basic principle of criminal Jurisprudence. The NHRC in February, 2000 recommended repeal of the 'Habitual Offenders Act 1952' later in march 2007, the UN's Anti Discrimination Body Committee on the Elimination of Racial Discrimination (CERD), noted that "the so-called de-notification and nomadic which are listed for their alleged 'criminal tendencies' under the former Criminal Tribes Act (1871), continue to be stigmatized under the Habitual offender Act 1952, and effectively rehabilitation the de-notification and nomadic tribes. According to the body, since much 'Habitual offender Act 1952' is derived from the earlier 'Criminal Tribes Act 1871', it doesn't show a marked departure in its intent, only gives the formed notified tribes new name i.e. de-notified, hence the stigma continues so does the oppression, as the law is being denounced on two counts, first that "all human beings are born free and equal" and second that it negates a valuable principles of the criminal justice system-innocent until proven guilty.

In 2008, the Government of India established the National Commission for De-notified, Nomadic and Semi Nomadic Tribes (NCDNT) of ministry of social justice and empowerment recommended that same reservation as available to SC/ST be extended to around 11 crore peoples of de-notified nomadic or semi-nomadic tribes in India. And this commission has given more special provisions to de-notified tribes. Those programmes are

1. Reservations as available to Scheduled Castes and Scheduled Tribes should be extended to de-notified, nomadic or semi-nomadic tribe categories.
2. Extension of Prevention of Atrocities Act to them. The Act currently applies to only SCs and STs.
3. Government should get a "tent to tent" survey done within the next six months and also a community-wise census so as to gather specific data about 1,500 nomadic and semi-nomadic tribes and 150 denotified tribes.
4. Initiation of a special housing scheme to ensure that families are provided with "small pucca houses" in the next five years. Provide permanent shelter by helping them settle down as villages. The Government should be facilitating the settlement of such tribes as villages by acquiring land for the purpose.



5. A Minimum Land Holding Act should be put in place to guarantee land to these tribes in case they want to settle down and engage in agriculture.
6. Suitable training should be provided to these tribals to develop their existing skills and develop livelihood question.

International safeguard of de-notified tribes: Not all International instruments are legally bindings Treaties. For examples, some of the most important human rights instruments are Declarations. A Declaration does not have any legal power to enforce compliance, but rely purely on the normal weight its carries.

Indigenous peoples right overlap with many other human rights. Many important indigenous peoples right are not framed in specific indigenous people's treaties, but are part of more general treaties, like the UDHR or the Convention on the Prevention of Punishment of the crime of genocide or ICCPR or ICESCR.

United Nations Declaration on the Rights of Indigenous Peoples-2007: This is most comprehensive statements of the rights of the indigenous peoples to date, establishment collective rights to a greater extent than any other document in international human right law. Consisting of 46 Articles. It establish the rights of indigenous peoples to protection of their cultural property and identity as well as right to education, employment, health, religion, language, social security and more. And it also protects the rights of indigenous peoples to own land collectively. Although states are not legally bound by the declarations, it will exert a considerable amount of moral force.

UNIVERSAL DECLARATIONS OF HUMAN RIGHTS (UDHR)-1948

UDHR is the first International document that States that all human beings are "equally in dignity and rights". Everybody is entitled to the rights in the declarations. "Without distinction of any kind, such has race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". And the term "universal" itself is sufficient to bind all the member countries.

Convention on the Prevention and Punishment of the Crime of Genocide-1948: It comprises of 19 articles imposing obligation on state parties to take legislative measure to implement the convention. According to article II, genocide means any of whole or in part, a national, ethnical or religious groups "killing members of the group; causing serious bodily or mental harm to members of the groups; deliberately inflicting on the groups conditions of life calculated to bring about its physical destruction in whole or in part imposing measures intended to prevent birth within the group; forcibly transferring children of the groups to another groups. India is a party to the convention and also enacted Genocide Act 1955 to give effect to the provisions of the convention.

International Convention on Civil and Political Rights (ICCPR)-1966: This Covenant outlines the basic Civil and Political rights of individuals. There are also provisions for collective rights. "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."

International Convention Economic, Social and Cultural Rights (ICESCR)-1966: This Covenant describes the basic economic, social, and cultural rights of individuals. It also has provisions for collective rights.

International Convention on Elimination of All Forms of Racial Discrimination-1966: "Racial discrimination" is defined as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

Convention on Indigenous and tribal peoples, 1989.(ILO convention no 169): The ILO Indigenous and Tribal Peoples Convention was the first international convention to address the specific needs for Indigenous Peoples' human rights. The Convention outlines the responsibilities of governments in promoting and protecting the human rights of Indigenous Peoples.



Convention on the Rights of Child- 1990: The Convention contains regulations and suggestions relevant to Indigenous Peoples on the non-discrimination of children, the broadcasting of information by the mass media in minority languages, the right to education, including education on human rights, its own cultural identity, language and values. Article 30 states that children of minorities or indigenous origin shall not be denied the right to their own culture, religion or language.

Declaration on the Rights of Persons belongs to National or Ethnic, Religious and Linguist Minorities-1992: This Declaration deals with all minorities, which includes many of the world's Indigenous Peoples. It only concerns individual rights, although collective rights might be derived from those individual rights. The Declaration deals both with states' obligations towards minorities as well as the rights of minority people. Topics that are dealt with include the national or ethnic, cultural, religious or linguistic identity of minorities; the free expression and development of culture; association of minorities amongst themselves; participation in decisions regarding the minority; the exercise of minority rights, both individual and in groups; and education of and about minorities.

Rio Declaration of Environment and Development, 1992: These two documents are connected to the Earth Summit in Rio de Janeiro. In them, the special relationship between Indigenous Peoples and their lands is acknowledged. Indigenous Peoples have a vital role in environmental management and development because of their traditional knowledge and practices. In order to fully make use of that knowledge, some Indigenous Peoples might need greater control over their land, self-management of their resources and participation in development decisions affecting them.

Convention on the Biological Diversity, 1992: The Convention calls upon its signatories to "respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices;"

Vienna Declaration and Programme of Action, 1993: The Vienna Declaration is the closing declaration of the 1993 World Conference on Human Rights held in Austria. It "recognizes the inherent dignity and the unique contribution of indigenous people to the development and plurality of society and strongly reaffirms the commitment of the international community to their economic, social and cultural well-being."

Report of the International Conference on Population and Development 1994: At the Conference it was agreed that the perspectives and needs of Indigenous Peoples should be included in population, development or environmental programs that affect them, that they should receive population- and development-related services that are socially, culturally and ecologically appropriate. Another important decision was that Indigenous Peoples should be enabled to have tenure and manage their land, and protect the natural resources and ecosystems on which they depend.

Durban Declaration and Programmes of Action 2001: The Durban Declaration and Programme of Action have a specific section dealing with Indigenous Peoples issues. Perhaps more important than all the recommendations is the fact that the Declaration is the first United Nations document that uses the phrase "Indigenous Peoples" rather than "Indigenous People"

Constitution Safeguard de-notified tribe:

The Constitution of India has also guaranteed to all its citizens some Fundamental Rights. These are the basic rights, which are essential for the growth of an individual's personality and are enjoyed by each citizen irrespective of caste, colour, creed, religion, race and sex.

In addition to this, our Constitution has distinctive provisions to safeguard the rights and interest of the indigenous people. Let us have a look on the provisions laid down by the Constitution of India.

Article 14: - Equality before law.

Article 15: - Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

Article 16: - Equality of opportunity in matters of public employment



Article 46: - Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.

Article 243D: - Reservation of seats in Panchayats.

Article 243T: - Reservation of seats in Municipalities.

Article 244: - provisions as to the Administration and control of Scheduled Areas and Tribal Areas.

Article 244 A: - Formation of an autonomous State comprising of certain tribal areas in Assam and creation of local Legislature or Council of Ministers or both therefore.

Article 275: - provisions for Grants-in-Aid to enable the state to meet the cost of tribal development scheme.

Article 330: - Reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the people.

Article 332: - Reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States.

Article 335: - Claims of Scheduled Castes and Scheduled Tribes to services and posts.

Article 338A: - National Commission for Scheduled Tribes.-

Article 339: - Control of the Union over the administration of scheduled Areas and the welfare of Scheduled Tribes.

Article 366: - Definitions: - In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say. "Scheduled Tribes" means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under article 342 to be Scheduled Tribes for the purposes of this Constitution.

Fifth Schedule – Provisions as the administration and control of scheduled Areas and Scheduled Tribes.

Sixth schedule – Provisions as to the administration of Tribal Areas in [The States of Assam, Meghalaya, Tripura and Mizoram].

NATIONAL COMMISSION FOR DE-NOTIFIED, NOMADIC AND SEMI NOMADIC TRIBES

The Constitution of India identifies only scheduled castes, scheduled tribes and backwards. It does not make any special provision for de-notified tribes as such. Some of the de-notified and nomadic tribes got status of SCs in some states while others got status of STs. But many of them are neither SCs nor STs. In 2008, the Government of India established the National Commission for De-notified, Nomadic and Semi Nomadic Tribes (NCDNT) to study various developmental aspects of these Tribes. The Commission made several recommendations, enumerated as follows:

Reservations as available to Scheduled Castes and Scheduled Tribes should be extended to de-notified, nomadic or semi-nomadic tribe categories.

Extension of Prevention of Atrocities Act to them. The Act currently applies to only SCs and STs.

Government should get a "tent to tent" survey done within the next six months and also a community-wise census so as to gather specific data about 1,500 nomadic and semi-nomadic tribes and 150 de-notified tribes.

Initiation of a special housing scheme to ensure that families are provided with "small pucca houses" in the next five years. Provide permanent shelter by helping them settle down as villages. The Government should be facilitating the settlement of such tribes as villages by acquiring land for the purpose.

A Minimum Land Holding Act should be put in place to guarantee land to these tribes in case they want to settle down and engage in agriculture.

Suitable training should be provided to these tribal to develop their existing skills and develop livelihood options.

CONCLUSION

DNT's are distinguished in relation to their ancestry, their race – this discrimination prejudices their benefit of many human rights – the right to life, liberty and security, the right to equality before law, and the right not to be discriminated against. It is also important that the specific human right violations made by state authorities, including police, against these tribes are accounted for by the State and the colonial view that DNTs have



“criminal tendencies” are not used to scapegoat these victims or deny them justice to human right violations that they have suffered. There is also the need for adopting policy measures and ending the existing racial laws in India. The Committee on the Elimination of Racial Discrimination to raise these issues with the government of India and ask concerted effort to end all racial discrimination against the De-notified and Nomadic Tribes by ensuring its commitment to international human rights standard and principles.

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